IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/09/2002

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

A.S.NO.13 OF 1991

1.Danusu
2.Sait @ Panchanathan
3.Pargunam
4.Janakiammal
5.Sudekshanan .. Appellants

-Vs-

1.Chandrakesu
2.Pandian
3.Sambandan
4.Thangamani
5.Vasugi .. Respondents

Appeal Suit filed against the judgment and decree of the Subordinate Judge, Cuddalore dated 27.11.1990 and made in O.S.No.186 of 1889.

!For Appellants : Mr.K.Kannan

^For Respondents 1 to 3: Mrs.P.Hema Sampath
For Respondents 4 &5 : Mr.A.Sivaji.

:JUDGMENT
The above Appeal Suit is directed against the judgment and decree dated 27.11.1990 made in O.S.No.186/89 by the Court of Subordinate Judge, Cuddalore, thereby, the trial Court in a suit for partition filed by the respondents No.1 to 3 herein has concluded that the suit properties are joint family properties available for partition and granting such other reliefs thus partly allowing the suit passing a preliminary decree.

2. Tracing the history of the appeal coming to be preferred it comes to be known that it is the respondents 1 to 3 herein who filed the suit for partition and separate possession of plaintiffs' 30/63 shares in the properties and for plaintiffs' share of the future income from the properties to be determined and for costs. The appellants 1 to 3 herein and the respondents are brothers and sisters. The fourth appellant is the mother of the appellants 1 to 3 and respondents 1 to 5. The fifth appellant is the first appellant's son.

3. The plaint averments are that the suit properties are ancestral properties; that the appellants 1 to 3 and respondents 1 to 3, along with their father Krishnaswami Gounder constituted a Hindu undivided family enjoying the properties in common; that on 22.7.1988, the father died and the first appellant, as the eldest member of the coparcenary was in management; that some properties were purchased in his name as he was the eldest son; that in the middle of 1987, the father took ill and he could not speak or move about; that on 20.6.1988, under the pretext of taking him to a doctor, the appellants seem to have fabricated a Will; that the father was weak and was not able to comprehend anything; that the Will has totally disinherited the respondents; that the 4th respondent at that time was a widow in stringent circumstances and the 5th respondent was a totally blind woman living in a blind school; that the father was affectionate to all his children; that the recital in the Will that the daughters were well settled was false; that the father was not in a sound and disposing state of mind; that he could not also dispose of the entire property; that the Will is void and that on Krishnaswamy Gounder's death the sons are entitled to a 1/7th share each plus a 1/6th share each in the father's share, totaling to 30/63 each; that since the properties are ancestral properties the 4th respondent is entitled to an equal share along with her brothers. The fifth respondent herein remained ex parte.

4. According to the appellants 1 to 4 herein, the family had only 16 cents in S.No.191/5 (now S.No.13/8) described as item 8 in the plaint schedule; that the father purchased properties with help from the family of his first wife Janagammal; that her mother and two sisters stayed with Krishnaswamy Gounder who purchased properties out of the funds provided by his mother-in-law; that the purchases were gradual and not out of income from the ancestral nucleus; that the first appellant helped him in agriculture; that suit items 4,5,6 and 19 were settled on the first respondent by a registered deed dated 7.10.1987; that the remaining items were disposed of by the Will dated 17.6.1988; that there was nothing unnatural about the Will; that the reason for disinheriting his daughters was because the fifth respondent a widow, had been given properties by her husband and the 4th respondent, though blind was employed; that the respondents 1 to 3 herein have to share the repayment of family debts. This written statement of D1 to D4 has been adopted by 7th defendant.

5. The 6th defendant would file a separate written statement to the effect that the suit properties are ancestral and managed by their father; that this defendant is blind and she is entitled to inherit equal share being the daughter of late Krishnaswamy Gounder, and that this defendant is willing for partition if she is given equal share in the suit properties.

6. Based on the above pleadings the trial Court would frame the following issues namely:
(i)Whether the plaintiffs are entitled to partition and separate possession of 30/63 shares?

(ii)Whether the Will is true? If so, whether it is binding on the plaintiffs?

(iii)Whether the suit properties are joint family properties?

(iv) Whether the plaintiffs are entitled to discharge the family debts?

(v)Whether the suit is bad for joining the unnecessary parties?

(vi)What relief the plaintiffs are entitled to?

7. The trial Court conducted a full trial in which the plaintiffs besides examining P.Ws. 1 to 3 for oral evidence would also mark exhibit A1 dated 22.7.1988 an invitation card, for documentary evidence. Likewise on the part of the defendants, besides examining D.Ws. 1 to 7 would mark exhibits B1 to B39 for documentary evidence.

8. In consideration of the oral and documentary evidence, the learned Additional Subordinate Judge, Cuddalore would pass a preliminary decree for partition and separate possession allotting 3/7 shares in favour of the plaintiffs, further remarking that the other relief for mesne profits would be decided in a separate proceeding. Aggrieved, the appellants have come forward to prefer the above Appeal suit on certain grounds as put forth in the memorandum of appeal.

9. During arguments, the learned counsel appearing on behalf of the appellants would submit that the defendants 1 to 4 and 7 are the appellants herein; that the plaintiffs are brothers and they sought for 30/63 shares from out of the suit property; that according to them after the death of their father, his share devolved on sons and daughters; that only item 8 with 15 cents of land is productive; that the trial Court passed a preliminary decree allotting 3/7 shares in favour of the plaintiffs, further directing them to be put in separate possession of the same; that all the suit properties were purchased by their father after 1946; that their father's mother-in-law Rathinammal was gifted certain properties by her husband Muthusamy Gounder; that for the sale deeds dated 1.8.1945 and 13.8.1945 the moneys were realised by Rathinammal; that all the acquisitions of the properties are by purchase; that as far as joint family nucleus is concerned, the only contention is that his mother-in-law presented with the property; that there is no document to show the same; that there is no plea also to show self earning; that in the year 1945 all the parties were young; that the family is admittedly a very large family; that one of the daughters is blind and in the blind school; that the first plaintiff's sons are well settled and married; that the onus of proof of the existence of undivided joint family is heavily on the plaintiffs and it never shifts on the defendants that they have to prove. At this juncture, the learned counsel would cite a judgment of this Court delivered in T.K.KAMALA AND OTHERS vs. A.R.THULASI RAO reported in 200 2(I) MLJ 382 wherein it has been held:

"There can be a presumption that the family continues to be joint, but there cannot be any presumption that the property possessed by the family should be a joint family property."

10. Further arguments of the learned counsel is that the Will is unacceptable; that the first plaintiff's sons are well settled and married; in

respect of 1/7th share the Will is operated; that the mother has been examined as P.W.3 at 1996. At this juncture the learned counsel would cite two judgments the first one delivered in K.SENGODAN v. K.DHARMALINGAM AND OTHERS reported in (1995)1 MLJ 336 and the 2nd one delivered in MUNIAPPA NAICKER v. BALAKRISHNA NAICKER reported in 19 98-2 L.W.259.

11. Citing Order 41 Rule 33 C.P.C. the learned counsel would point out that the appellate Court has power to pass any decree or make any order which ought to have been passed or made and to pass such further or other decree or order as the case might require.

12. In reply, the learned counsel appearing on behalf of the respondents 1 to 3 would submit that the said Krishnaswamy had three sons and two daughters; that from among the daughters one is blind and the other is widow; that while such being the conditions of the daughter it is totally unacceptable that the father executed the Will in favour of D1 the eldest son; that the attestor of the Will is the wife; that approaching from that angle, the trial Court has held that the father executed the Will in favour of the first defendant as the eldest son; that what the trial Court says is that the father could only bequeath his 1/7 share by way of Will and not the entire properties; that in respect of 1/7 share the Will operates; that it has been executed in a garden at Cuddalore Sub-Registrar's Office; that Will is not as any other document and it has to be proved strictly.

13. From out of the two judgments cited by the learned counsel appearing on behalf of the appellants, the first one by a Division Bench of this Court and the second one by a learned single Judge. In the first Division Bench Judgment reported in 1995(1) MLJ 336 (supra) it is held:

"It can, however, not be denied that the initial burden is only on the one who contends that the property belongs to an undivided Hindu family, and only where the initial burden is discharged by the one who is setting up such a claim, then the other side who contends to the contrary be called upon to establish his case. The law on the subject has never been in doubt. The appellant has failed to prove the existence of such ancestral nucleus which by itself, is not sufficient but availability of the ancestral nucleus or its adequacy of the same to fund the later acquisitions, are also essential requisites for an answer in favour of his contention."

14. So far as the 2nd judgment is concerned, it is reported in 1998-2 Law Weekly 259 (supra) it is held:

"On the basis of the law declared in the various Texts as well as case-laws, the following propositions emerge:- (1) A Hindu Family is presumed to be joint. But at the same time, there is no presumption that the joint family is possessed of family properties. (2) The manager, if he is in possession of family properties and is in management thereof and acquires any other property, the law presumes that it is joint family property. (3) Even in such cases, presumption will arise only if it is shown that the family property had

left surplus income out of which other properties could be acquired. If the nature and relative value of the property are such that there is no income, any fresh acquisition cannot be treated as a family property. It is well within the powers of the members of the family that they can acquire separate properties and can have their own avocations in life."

15. On the part of the respondents they would also cite from the decided cases of this Court and the Hon'ble Apex Court. The first one being a judgment of a Division Bench of this Court reported in PONNUSWAMY v. MEENAKSHI AMMAL AND OTHERS (1989-2 L.W.227), wherein it is held:

"It is to be noted that in cases where it is established or admitted that family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired the presumption arises that it was joint property and the burden shifts to the party alleging selfacquisition to establish affirmatively that the property was acquired without the aid of the joint family."

16. The second judgment is that of a single Judge of this Court reported in GOVINDAN CHETTIAR ETC. v. AKILANDAM ETC. & OTHERS (1997-3 L. W.673) wherein it is held:
"Deceased was aged nearly 90 years at that time. The Sub Registrar's Office is far away from his residence. Whether the formalities to be complied with in the Sub-Registrar's Office were made known to the testator, and whether he was aware that he was executing a Will, is not clear, and the evidence of the Sub-Registrar is also lacking in this case. Whether the Sub-Registrar really discharged his official duty in accordance with law is also not in evidence. The Will is also executed on stamp papers, which is unnecessary. The stamp papers were also purchased a few days prior to the purported execution. Why the stamp papers were purchased in the name of first defendant/the propounder/legatee stands unexplained. It is not the case of the first appellant that they have no other relations so that they could be attestors. The attestors are none other than his (first defendant's) business associates.... The signature appearing in the Will also seems to be very shaky, and whether the deceased would have affixed his signature while he was in his proper senses itself is doubtful. Evidence regarding the same is not satisfactory. The signature in each and every page appears to be different, and from the way in which they are affixed, an impression is created that they might not have been put by a person having full mental capacity."

17. The third judgment which is of the Full Bench of the Hon'ble Apex Court reported in H.VENKATACHALA IYENGAR v. B.N.THIMMAJAMMA AND OTHERS (1959)SCJ 507) wherein it is held:

"There may however be cases in which execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature: the condition of the testator's mind may appear to be very feeble and debilitated: and evidence adduced may not succeed in removing the legitimate doubt as to the mental

capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said disposition may not be the result of the testator's free will and mind. Such case the Court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious Circumstances naturally tends to make the initial onus very heavy; and unless it is satisfactorily discharged, Courts would be reluctant to treat the document as the last will of the testator. It is true that if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators: but even without such pleas circumstances may raise a doubt as to whether the testator was acting on his own free will in executing the will, and in such circumstances it would be a part of the initial onus to remove any such legitimate doubts in the matter."

18. The fourth judgment is of the Full Bench of the Madras High Court reported in SUBRAMANIAN v. SINNAMMAL (A.I.R.1930 MADRAS 801) wherein it is held that "the plaintiff, dissatisfied with decree, appealing - In proper case appellate Court can dismiss plaintiff's suit in toto though respondent has not preferred cross-appeal or memorandum of objections."

19. The last judgment cited on the part of the learned counsel for the respondents is one reported in KOKSINGH v. DENKABAT (A.I.R.1976 (SC) 634)wherein it it held:
"The appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection:"

20. Assessing the facts and circumstances of the appeal, in the light of the position of law governing the subject and the evidence adduced before the trial Court and the appreciation of the same, it must be mentioned that it is a suit paramountly for decision on two points which have to be decided legally and on facts of the case, even though it cannot be said that the other issues involved in the case are less important, but so far as the case in hand is concerned, once answer is obtained for the following points 1 and 2, it is very easy to settle the other points involved in the whole of the appeal and therefore the following points are framed for determination of all the questions that are involved in the whole of the appeal suit:

(1)Whether the suit properties are ancestral or self-acquired in nature so far as the father of the plaintiffs and defendants 1 to 3 and 5 and 6 and the husband of the 4th defendant viz.late Krishnasamy Gounder is concerned?

(2)Whether the Will dated 17.6.1988 said to have been executed by Krishnasamy Gounder in favour of defendants 1 to 4 giving life estate to the fourth

defendant, wife of Krishnasamy Gounder and thereafter conferring absolute right to the defendants 1 to 3 alone, is true, valid and binding on the plaintiffs and others?'

(3)Whether the trial Court is right in arriving at the decision as it has arrived at?

(4)What relief, if any, the appellants are entitled to?

21. A careful perusal of the judgment of the lower Court would show that the lower Court has not only traced the facts pleaded on the part of the plaintiffs and the defendants but also has framed proper issues numbering six including the above two main issues which are essential to decide the case of such nature as it is one in hand.

22. Looking into the evidence adduced by parties, so far as the oral evidence of the plaintiffs is concerned, the third plaintiff besides examining himself as P.W.1 would also examine two other witnesses as P.Ws.2 and 3, who are from the local area. P.W.1 would adduce evidence adhering to the pleadings of the plaint that the suit properties are ancestral; that their father passed away on 22.7.1988 leaving behind him the plaintiffs and defendants 1 to 6 as his legal heirs whereas their father was entitled to only 1/7th share from out of all the properties since the plaintiffs, defendants 1 to 3 and their father were the co-parceners of the Hindu undivided family all equally becoming entitled to a share in the suit properties; that Ex.B.16 Will dated 17.6.1988 was not voluntarily executed by their father but was made up by the first defendant with the help of other defendants and a make believe document artificially prepared when their father Krishnasamy Gounder was ailing and not having clean disposing state of mind and therefore it is not binding on them. Moreover, since the suit properties are ancestral, their father did not have the locus standi to execute the Will regarding all the suit properties whereas he was entitled to 1/7th of the same and therefore would ultimately pray to pass the decree as prayed for in the suit. In the said process, P.W.1 would also speak about all other parties and as to how the properties were acquired from the ancestral nucleus in the name of their father and the first defendant. He would also adduce evidence to the status of defendants 4 to 6.

23. So far as the evidence of P.Ws.2 and 3 are concerned, their evidence is short and precise to the effect that they know the late Krishnasamy Gounder and that for 3 to 5 months prior to his death, he was not keeping good health and was not able to move around himself without the assistance of others and all the plaintiffs and defendants were living as one and the same family contributing to the earning and welfare of the family. These witnesses by and large would withstand the cross-examination so far as the stand taken by them is concerned.

24. So far as the documentary evidence adduced on the part of the plaintiffs is concerned, the sole document marked as Ex.A.1 is the card announcing the 13th day death ceremony of late Krishnasamy Gounder and nothing else.

25. On the part of the defendants/appellants herein and others, 7 witnesses would be examined for oral evidence, the 6th defendant as D.W.1, the first defendant as D.W.2, the 4th defendant as D.W.3, one Ranganathan as D.W.4, one of the attestors of Ex.B.16 Will viz. Kalivaradan as D.W.5, the scribe of the Will as D.W.6 and yet another Manavalan who is a clerk in the Agricultural Cooperative Society as D.w.7.

26. So far as D.Ws.1 to 3 are concerned, they would confirm Ex.B.16 Will to be true and valid and genuinely executed by late Krishnasamy Gounder giving details such as that the Will was executed at their residence by Krishnasamy Gounder; that D.W.6 being the scribe and D.W.5 and yet another Vadivel as the attestors and they both witnessed the executant signing the said Will. D.W.7 would give the details of one loan obtained by Krishnasamy Gounder in the Cooperative Society but the details of other loans obtained by Krishnasamy Gounder in the Cooperative Society he could not readily offer but would say that only after seeing the ledger concerned with those loans, which he had not brought to the Court, he could speak of the other loans.

27. Regarding the documentary evidence, 39 documents would be marked on the part of the defendants as Exs.B.1 to B.39, Ex.B.1 is the settlement deed dated 18.4.1910 executed by one Muthusamy Gounder in favour of his third wife Rathnammal, Ex.B.2 dated 1.9.1945 is the sale deed executed by Krishnasamy Gounder in favour of one Appasamy Bhaktar, Ex.B.3 is yet another sale deed executed by Krishnasamy Gounder in favour of Chettiar Gounder dated 13.8.1945, Ex.B.4 dated 17.11.1945 is a sale deed executed in favour of Krishnasamy Gounder, Ex.B.5 dated 11.6.1955 is yet another sale deed in favour of Krishnasamy Gounder, Exs.B.6 to B.11 respectively dated 12.3.1966, 5.8.1968, 25.6.1969, 20.1.1969, 23.1.1970 and 30.1.1973 are the sale deeds; Ex.B.12 dated 27.6.1977, Ex.B.13 dated 6.2.1978 and Ex.B.14 dated 22.7.1987 are the sale deeds executed in favour of the first defendant by different parties; Ex.B.15 dated 7.10.1987 is the settlement deed executed by Krishnasamy Gounder in favour of the first defendant, Ex.B.16 dated 17.6 .1988 is the last Will dated 17.6.1988 executed by Krishnasamy Gounder in favour of defendants 1 to 4; Ex.B.17 dated 17.9.1985 is the certified copy of the judgment delivered in O.S.No.104 of 1983 by the Court of District Munsif, Cuddalore; Exs.Bd.17 to B.23 are the entries effected in the Cuddalore Assembly and Parliamentary Constituencies Voters List; Exs.B.24 to B.26 are the receipts issued in favour of the first defendant; Ex.B.27 is a letter addressed to the first defendant by the Cooperative Bank; Ex.B.28 is the reply from UCO Bank to the first defendant; Exs.B.29 and B.30 are the letters from Indian Overseas Bank; Ex.B.31 dated 11.1.1985 is a legal notice issued to the first defendant; Exs.B.32 to B.34 are the letters from Indian Overseas Bank to the 7th defendant; Ex.B.35 dated 20.10.1989 is a letter for loan; Ex.B.36 is a bill, Ex.B.37 dated 25.9.1931 is a settlement deed executed in favour of Rathnammal by Muthusamy; Ex.B.38 dated 3.10.1941 is the sale deed executed in favour of Krishnasamy Gounder and others and Ex.B.39 dated 13.7.1946 is a sale deed in favour of a third party.

28. The lower Court while analysing the third issue viz. `whether the suit properties are the ancestral properties' and assessing the evidence adduced by P.W.1 and D.W.1 and the manner in which the properties

have been purchased in the name of the deceased Krishnasamy Gounder and the first defendant wherein regarding those properties purchased in the name of the first defendant i.e. Item No.11 in Ex.B.12, Items No.14 and 15 in Ex.B.13 and Item No.12 in Ex.B.14, the first defendant, as D.W.2, would adduce evidence to the effect that the Will properties are with the 4th defendant, his mother, who is getting the income from them and the income from other properties is being collected by him; that for the properties purchased in his favour, he paid the sale consideration by selling his wife's jewels and getting loan from his father-in-law. Likewise, P.W.1 would also adduce evidence to the effect that the properties are under the control of his eldest brother and he is doing agriculture; that they were all living jointly before their marriages and after their marriages, they started living separately; that the entire show of the family was run by the first defendant. The lower Court would find that for 7 or 8 years, the plaintiffs were living separately. The lower Court would also find from the evidence of P.W.2, the first defendant, that from the year 1982 onwards, the plaintiffs were living separately, the first plaintiff in Item No.18 and the second and third plaintiffs in the properties purchased in the name of the first defendant and therefore easy conclusions have been arrived at by the lower Court offering the reason that if really the first defendant had purchased those properties from out of his self-earning or sources, he would not have allowed the second and third plaintiffs to occupy those places for the residential purposes and therefore would conclude that those properties purchased in the name of first defendant were joint family properties; that it is also evident that for 16 years, even during the lifetime of their father, the first defendant was managing the entire family affairs and therefore, no doubt would be entertained by the lower Court to arrive at the conclusion that the suit properties were ancestral and not self-acquired either by father or by the first defendant.

29. Coming to the second issue pertaining to Ex.B.16 Will, dated 17 .6.1988 said to have been executed by Krishnasamy Gounder in favour of the defendants 1 to 4, since already it had been decided that the suit properties were joint family properties where Krishnasamy Gounder also became entitled to 1/7th share in all, he was at liberty to execute the Will regarding his 1/7th share in the whole of the suit properties in favour of anyone. However, basically it has to be decided whether the Will had been genuinely executed by late Krishnasamy Gounder or is it a made up or make-believe document prepared in an orchestrated manner by the first defendant with the help of the other defendants taking advantage of the age and ailment of Krishnasamy Gounder at the time of execution of Ex.B.16 Will as it is alleged on the part of the other side and it is the vital for decision.

30. So far as this aspect is concerned, the admitted facts are that though Krishnasamy Gounder was in the nature of signing documents, only his thumb impression has been affixed and he did not sign Ex.B.16 . From the evidence of D.Ws.5 and 6, it could be ascertained that he was not able to sign because of his old age and therefore his thumb impression had to be affixed. A person who was so aged and not in a position to physically put his signature might not necessarily be mentally alert as a normal human being and mystery shrouds regarding the genuine execution of the Will by Krishnasamy

Gounder in Ex.B.16 especially in view of the evidence adduced on the part of P.Ws.2 and 3 to the effect that for 3 to 5 months, he was not keeping good health so as to take care of himself and that he died on 22.7.1988 exactly one month and 5 days immediately after execution of Ex.B.16 and further in view of the fact that he was lifted in a taxi (which was not the custom which was only without going by bus as it had been in the normal circumstances) to sign the Will in the Sub Registrar's Office on the date of execution of the same and P.Ws.5 and 6 also deposed that it was the first defendant who brought them and that they have never earlier either scribed or attested any document executed by Krishnasamy Gounder and therefore it is highly suspicious whether at the time of execution of the said Will, the executor Krishnasamy Gounder was in a clear disposing state of mind so as to validly execute the said Will and paramountly it is up to the defendants to discharge in evidence the suspicious circumstances that have crept into the execution of the Will which they have not satisfactorily done.

31. Further there is absolutely no reason assigned either in Ex.B.1 6 Will or in the evidence by P.Ws.1 to 3 as to why and for what reason Krishnasamy Gounder executed the Will bequeathing the suit properties in favour of only the defendants 1 to 4 and none else particularly ejecting the plaintiffs who are also his sons and hence the suspicion grows more burdening the defendants to cast off the same by tendering convincing and gratifying reasons in which they have miserably failed. The surrounding circumstances of all the events also would not suggest that Krishnasamy Gounder either had any liking for these defendants or hatred for the plaintiffs or that the plaintiffs have gained the displeasure of the executor by indulging in such unpleasant things to him. When all these elements are missing and not answered in any manner either in the pleadings or in evidence, the only conclusion that could be arrived at by the Court regarding the Ex.B.16 Will, pertaining to its coming into being or its contents, that since they had not been established validity, it cannot be held validly executed by Krishnasamy Gounder to the expectations of law. Therefore, even the reasons assigned on the part of the lower Court to arrive at the conclusion that Krishnasamy Gounder was capable of executing the Will regarding his 1/7th share in the family property is unacceptable since the Will has not been proved in a legal manner, as held by the legal propositions which have been widely brought forth in the judgments cited on the part of the respondents herein, extracted supra. Therefore, it is only prudent to conclude that the 1/7th share that was belonging to deceased Krishnasamy Gounder was to be divided among the plaintiffs and defendants 1 to 6 equally, which would alone serve the ends of justice and the same is decided accordingly.

32. Since the main issues regarding the character of the suit properties and the genuineness and validity of Ex.B.16 Will have been determined in the manner aforementioned thus settling Issues No.2 and 3, which are basic and essential, there is no difficulty in deciding the other issues No.1,4,5 and 6 at all.

33. So far as the first issue `whether the plaintiffs are entitled to partition and separate possession of 30/63 shares in the suit properties' is concerned, consequent to the conclusions arrived at to issues

No.2 and 3, it could only be answered that they are entitled to their shares as decided supra. It is added that from out of the 1/7 th share that is decided that the deceased father Krishnasamy Gounder had been entitled to, all the plaintiffs and defendants 1 to 6 shall equally be entitled to a share, needless to mention that defendants 5 and 6 are also each entitled to 1/9th share from out of the 1/7th share of Krishnasamy Gounder. It is relevant to add that even though one house site had been purchased in the name of the 7th defendant, son of the first defendant, since it is also treated as a property belonging to the undivided Hindu joint family consisting of the deceased father, plaintiffs and the defendants 1 to 3 and from out of the father's 1/7th share, the other defendants 4 to 6 also become entitled to 1/9th share in it along with the plaintiffs and defendants 1 to 3, the properties purchased in the name of the 7th defendant should also be decided in the same manner as it has been decided herein. Needless to mention that the 7th

defendant, since being only a name lender and the purchase in his name since being sham and nominal and for the benefit of the joint family, he would not become entitled to any share in all the suit properties individually.

34. Regarding issue No.4 pertaining to the loans also, since already the shares of parties have been decided while answering the first issue, in accordance with the shares declared to be belonging to each one of the plaintiffs and defendants 1 to 6, they are liable to clear the loans.

35. Coming to issue No.5, it is well decided by the lower Court itself that the suit would not become affected by non-joinder of necessary parties and the same is decided accordingly. The reasons assigned by the lower Court since being valid, they are accepted by this Court also.

36. The sixth and the last issue `whether the plaintiffs are entitled to any other relief' is concerned, it could be decided that they are entitled to only those reliefs which have already been answered while deciding Issue No.1 and for all other legal benefits that they are entitled to in law and nothing else.

In result,

(i)the above appeal suit fails and the same is dismissed;

(ii)the findings of the Court below holding that Ex.B.16 Will is valid and binding, are set aside

(iii)It is declared that the plaintiffs, defendants 1 to 3 and the deceased Krishnasamy Gounder are each entitled to an equal share in all the suit properties including the properties purchased in the name of the 7th defendant;

(iv)that the plaintiffs and defendants 1 to 6 are each entitled to a 1/9th share in the 1/7th share of the properties allotted to Krishnasamy Gounder.

(v)The preliminary decree of the Court below is modified to the extent indicated supra.

However, in the circumstances of the case, there shall be no order as to costs.

Index: Yes
Internet: Yes
gr/Rao

To
The Subordinate Judge,
Cuddalore.